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In re Application of
VALDEZ-CAMPBELL, MARILYN
Application No.: 09/992,641
Filed: November 13, 2001

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: **DECISION ON PETITION**
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This is a decision on petitioner's request filed October 12, 2004, requesting withdrawal of the holding of abandonment of the above-identified application because the applicant made a bona fide attempt in responding to the office action mailed on December 15, 2003. Petitioner's response was received on April 19, 2004 and included a one-month extension of time and a certificate of mailing dated April 15, 2004.

The petition is granted.

MPEP 706.02(c) states in part:

Note that as an aid to resolving public use or on sale issues, as well as to other related matters of 35 U.S.C. 102(b) activity, an applicant may be required to answer specific questions posed by the examiner and to explain or supplement any evidence of record. See 35 U.S.C. 132, 37 CFR 1.104(a)(2). Information sought should be restricted to that which is reasonably necessary for the examiner to render a decision on patentability. The examiner may consider making a requirement for information under 37 CFR 1.105 where the evidence of record indicates reasonable necessity. See MPEP § 704.10 et seq.

Petitioner argues that a good faith effort to respond was made to the information requirement by the examiner. It was believed that the requirement was made under 37 CFR 1.105 and that if a statement that information required to be submitted is not readily available to the party from which it is requested, it will be accepted as a complete reply.

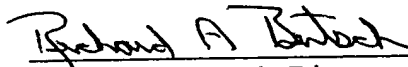
Art Unit: 3727

While it appears that examiner required information under 35 U.S.C. 132 and 37 CFR 1.104(a)(2) rather than 37 CFR 1.105, petitioner made an effort to respond to all requirements by the examiner and made a statement as allowed under 37 CFR 1.105 that the information (statement from the other parties) was unavailable at the time of response. In view of this statement, the amendment filed on April 19, 2004 is at the minimum a bona fide attempt to respond to the office action of December 13, 2003. As such, the examiner should have considered the amendment a bona fide attempt to the Office Action.

In view of the above, the Notice of Abandonment mailed August 13, 2004 is in error and is hereby vacated. The holding of abandonment is withdrawn.

The abandonment will be withdrawn and the amendment of April 19, 2004 entered. The application will be forwarded to the examiner for an office action not inconsistent with this decision.

Summary: Holding of Abandonment Withdrawn.



Richard A. Bertsch, Director
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